

Remarks

Claims 1-37 are currently pending in the Application.

Summary of claim amendments

This response amends Claims 1 and 24 to recite “registering with a first proxy at least the first device, including storing at least one parameter related to operative capability of the first information device.” Support for the amendments can be found, for example, in the originally filed Claim 33. No new matter has been added.

Telephone conference

Applicant thanks the Examiner for the many courtesies extended during the telephone conference held on March 15, 2006. During the telephone conference the Examiner clarified that the features “registering with a first proxy at least a first information device, including storing at least one parameter related to operative capability of the first information device” as recited in Claim 33 are allegedly implicitly disclosed in Stuart’s paragraphs [0033]-[0035] and [0040].

35 U.S.C. §103(a) Rejection

Claims 1-7, 10-26 and 33-37 stand rejected under 35 U.S.C. §103(a) as being obvious in view of Stuart (U.S. Pub. No. 2002/0101858). Claims 8-9 stand rejected under 35 U.S.C. §103(a) as being obvious in view of Stuart and further in view of Browning (U.S. Patent No. 6,707,581). Claims 27-32 stand rejected under 35 U.S.C. §103(a) as being obvious in view of Stuart and further in view of Hiltunen (U.S. Patent No. 6,754,484).

Applicant submits that the Examiner has **not** established a *prima facie* case of obviousness for the claims rejected under 35 U.S.C. §103(a). Applicant notes:

"To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference

teachings. Second, there must be a reasonable expectation of success. **Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.** The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure" (emphases added) *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Applicant submits that a *prima facie* case of obviousness has not been established because the Examiner has failed to show that Stuart teaches each and every element as claimed in the present application.

Claim 33

A. Applicant submits that the Examiner has not shown that Stuart discloses, suggests or teaches, *inter alia*, the following features recited by Claim 33 of the present application:

"registering with a first proxy at least a first information device, including storing at least one parameter related to operative capability of the first information device" (emphasis added)

The Examiner asserts that paragraphs 0033-0035 and 0040 on page 4 of Stuart implicitly disclose "storing at least one parameter related to operative capability of the first information device" as recited in Claim 33. See page 11, lines 1-3 of the Official Action and the summary of the telephone conference above. Applicant respectfully traverses the Examiner's assertion.

Paragraphs 0033-0035 of Stuart disclose a communication server that contains a processing unit and a memory for storing programming instructions that cause the processing unit to receive communication from a communication unit using a first protocol of a first service provider. Stuart's paragraph 0040 further discloses that the communication server's processing unit may also receive a response from the second communications unit and send a response to the communication unit using first protocol or second protocol.

Applicant respectfully submits that a memory unit that is used to store instructions on the operability of a processing unit can not possibly teach, disclose or suggest “storing at least one **parameter related to operative capability of the first information device**” (emphasis added) as recited in Claim 33.

The Examiner appears to make a factual assertion with respect to communication server’s memory unit being capable of storing “parameter related to operative capability of the first information device” recited in Claim 33. Since the Stuart reference only discloses storing instructions for operating communication server’s processing unit, Applicant assumes that the Examiner has made his factual assertion based on his personal knowledge.

When the Examiner bases a rejection on facts within his personal knowledge, the Applicant is entitled to require the Examiner to put the factual assertions in the form of an Affidavit. Please see 37 CFR 1.104(d)(2). Applicants hereby request that the Examiner comply with the rules of practice and put his factual assertions with respect to what is stored in communication server’s memory unit in Affidavit form. If the Examiner does not wish to do that then the Examiner must either cite a prior art reference supporting his factual assertions or withdraw them.

Applicant submits that Stuart does not teach, disclose or suggest “storing at least one **parameter related to operative capability of the first information device**” (emphasis added) as recited in Claim 33, because communication server’s memory unit only stores instructions for operating communication server’s processing unit. Hence, Claim 33 is patentable over Stuart and should be allowed by the Examiner. Claims 34-37, at least based on their dependency on Claim 33, are also believed to be patentable over Stuart.

B. Applicant submits that the Examiner has not shown that Stuart discloses, suggests or teaches, *inter alia*, the following features recited by Claim 33 of the present application:

“negotiating with a second proxy acting on behalf of a second information device to establish at least one parameter governing interaction between the first and second information devices … conduct **direct** communication between the first and second information devices” (emphasis added)

The Examiner interprets the feature of conducting “**direct** communication between the first and second information devices” (emphasis added) as recited in Claim 33 to mean conducting communication between first and second devices without using a mediation server/device. See page 2, section 3 of the Office Action.

The Examiner further concedes that Stuart fails to expressly disclose “**negotiating** with a second proxy … to establish at least one parameter governing interaction between the first and second information devices” (emphasis added) as recited in Claim 33. See page 11, second paragraph of the Office Action.

The Examiner asserts that Stuart discloses a communication server that can be co-located with or may physically be a portion of either the cellular server or the Internet Service Provider (ISP) servers. See page 11, third paragraph of the Office Action.

According to the Examiner, it would have been obvious to one of ordinary skill in the art to modify the teachings of Stuart to show negotiating between a first and second proxy to establish at least one parameter governing interaction between the first and second information devices. See page 11, fourth paragraph of the Office Action.

Applicants are confused by and object to the Examiner’s interpretation and modification of Stuart. On the one hand, the Examiner seems to interpret Stuart as not having any **mediation server/device** to allow a “direct communication between the first and second information devices” (emphasis added) as recited in Claim 33. On the other hand, the Examiner seems to be trying to modify Stuart to include the communication server’s functionality in Stuart’s cellular server or Stuart’s Internet Service Provider (ISP) servers

in order to show “negotiating with a second proxy … to establish at least one parameter governing interaction between the first and second information devices” (emphasis added) as recited in Claim 33.

According to Stuart, paragraphs 0033-0039 disclose a communication server that is capable of, among other things, selecting the communications services using the first protocol and the second protocol to support communications exchange between the communications unit and the second communications unit. See Stuart’s paragraphs 0033-0039.

Because Stuart’s communication server supports communications exchange between the communications unit and the second communications unit, once the functionality of the communication server is included in Stuart’s cellular server or Stuart’s Internet Service Provider (ISP) servers, the Examiner can no longer continue to assert that there is a “direct communication between the first and second information devices” (emphasis added) as recited in Claim 33. By modifying Stuart’s cellular server or Stuart’s Internet Service Provider (ISP) servers to support communications exchange between the communications unit and the second communications unit, the Examiner is contradicting his position that conducting communication between first and second devices is done without using a mediation server/device.

Applicant submits that Stuart does not teach, disclose or suggest “negotiating with a second proxy acting on behalf of a second information device to establish at least one parameter governing interaction between the first and second information devices … conduct **direct** communication between the first and second information devices” (emphasis added) as recited in Claim 33, because modifying Stuart as suggested by the Examiner would cause Stuart’s cellular server or Stuart’s Internet Service Provider (ISP) servers to support communications exchange between the communications unit and the second communications unit. Hence, Claim 33 is patentable over Stuart and should be allowed by the Examiner. Claims 34-37, at least based on their dependency on Claim 33, are also believed to be patentable over Stuart.

Claim 1

A. Applicant submits that, at least for the reasons stated above for Claim 33, Stuart does not teach, disclose or suggest “registering with a first proxy at least the first device, including storing at least one parameter related to operative capability of the first information device” (emphasis added) as recited in amended Claim 1. Hence, Claim 1 is patentable over Stuart and should be allowed by the Examiner. Claims 2-23, at least based on their dependency on Claim 1, are also believed to be patentable over Stuart.

B. Applicant submits that, at least for the reasons stated above for Claim 33, Stuart does not teach, disclose or suggest “passing messages between the first and second proxies to establish at least one parameter governing data exchange between the first and second devices; and conducting communication between the first and second devices in accordance with the at least one parameter by passing messages at least directly between the devices” (emphasis added) as recited in amended Claim 1. Hence, Claim 1 is patentable over Stuart and should be allowed by the Examiner. Claims 2-23, at least based on their dependency on Claim 1, are also believed to be patentable over Stuart.

Claim 24

A. Applicant submits that, at least for the reasons stated above, Stuart does not teach, disclose or suggest “registering with a first proxy at least the first device, including storing at least one parameter related to operative capability of the first information device” (emphasis added) as recited in amended Claim 24. Hence, Claim 24 is patentable over Stuart and should be allowed by the Examiner. Claims 25-32, at least based on their dependency on Claim 24, are also believed to be patentable over Stuart.

B. Applicant submits that, at least for the reasons stated above, Stuart does not teach, disclose or suggest “exchanging messages between the first proxy and a second proxy entity for the second device to determine at least one parameter governing direct communication between the devices using the wireless link; and conducting direct communication between the devices via the wireless link in accordance with the at least

one parameter" (emphasis added) as recited in amended Claim 24. Hence, Claim 24 is patentable over Stuart and should be allowed by the Examiner. Claims 25-32, at least based on their dependency on Claim 24, are also believed to be patentable over Stuart.

The Examiner is encouraged to contact the undersigned to discuss any other issues requiring resolution.

Conclusion

In view of the above, reconsideration and allowance of all the claims are respectfully solicited.

The Commissioner is authorized to charge any additional fees which may be required or credit overpayment to deposit account no. 08-2025. In particular, if this response is not timely filed, then the Commissioner is authorized to treat this response as including a petition to extend the time period pursuant to 37 CFR 1.136 (a) requesting an extension of time of the number of months necessary to make this response timely filed and the petition fee due in connection therewith may be charged to deposit account no. 08-2025.

I hereby certify that this correspondence is being deposited with the United States Post Office with sufficient postage as first class mail in an envelope addressed to Mail Stop RCE
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March 21, 2006
(Date of Deposit)

Shannon Tinsley
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March 21, 2006
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Encls:
Petition for a one-month extension of time;
Request for Continued Examination;
Postcard